

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF COMMUNITY AFFAIRS**

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**NOTICE OF PROPOSED FINAL TEXT OF STATE FESG
REGULATIONS
(Sections Amended - 8401, 8402, 8404, 8405, 8406, 8407, 8408, and 8411)**

To Interested Persons:

On October 10, 2003, the Department of Housing and Community Development published a Notice of Proposed Rulemaking to formally adopt State regulations for the Federal Emergency Shelter Grant Program (FESG). The Department received comments during the 45-day comment period, which ended November 24, 2003, and changes were made to the text of the proposed regulations. Government Code Section 11346.8 requires that substantive changes to the text of the proposed regulations be sent to all interested persons for a 15-day comment period.

A summary of the proposed modifications to the final text of the State FESG regulations is outlined below, and a copy of these proposed modifications is attached. Most of the proposed modifications have been made in response to public comment. Please read them carefully.

Comments related to these proposed modifications will be accepted from **March 1, 2004** through **the close of business on March 16, 2004**. Please submit all written comments on the proposed modifications to:

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Description of Method Used to Illustrate Changes to Original Text

In the attached document, deletions to the original text are shown by ~~strikeout~~ and additions to the original text are underlined.

Dated: February 27, 2004

_____Original Signature_____

Christina DiFrancesco
FESG State Regulations Coordinator
California Department of Housing and Community Development

Summary of Proposed Modifications to the Original Text of the State FESG Regulations

Section 8401 – Definitions

- 1) The Department has added a definition of “available annual State FESG allocation” to the regulations for purposes of clarification.
- 2) The Department has amended the definition of “Client housing” to clarify that Programs providing only Essential Services are included within this definition. This is consistent with the federal FESG regulations and current practice within the State FESG Program.
- 3) The Department has added a reference to the definition of ‘homeless’ found in the McKinney-Vento Act at 42 USC 11302. The Department is required to use this definition for the FESG program.
- 4) The Department has amended the definition of “Obligated Funds” to be consistent with the definition of “obligated” in the federal FESG regulations (24 CFR 576.3)
- 5) The definition of Safe Haven has been deleted since this term is not used anywhere else in the regulations.
- 6) The Department has added a definition of site control to the regulations as a result of public comment on this issue.

Section 8402 – Allocation of Funds

Language has been added to Section 8402 (e) which states that: “for one-year grants, the maximum grant amount per application shall not exceed 2% of the available annual State FESG allocation. For two-year grants, the maximum grant amount per application shall not exceed 4% of the available annual State FESG allocation”

Section 8404 – Eligible Organizations

Language has been added to Section 8404 (b) to clarify the eligibility of homeless facilities that operate only in the summer or only in the winter.

Section 8405 – Eligible Applications

- 1) Section 8405 (b) (5) has been amended to clarify that a complete application also includes signed certifications.
- 2) Section 8405 (b) (7) has been added to clarify that a complete application also includes responses to all of the Grant selection criteria set forth in Section 8411.
- 3) Section 8405 subdivision (e) has been amended to clarify that this subdivision sets forth exceptions to the completeness requirements stated in 8405 subdivision (b). Language has also been

added to subdivision (e) that sets forth an example of when the Department can ask for information that is missing from the FESG application.

Section 8406 - General Program Requirements

- 1) Language has been added to Section 8406 (a) (1) (iii) to clarify that The 10% limitation on staff costs set forth in 24 CFR section 576.21(a) (3) applies only to supervisory staff costs within the Operations funding category.
- 2) Section 8406 (a) (1) (vii) (B) has been amended to include a requirement that an applicant or State recipient providing Client housing establish rules for Client participation which shall: “include a description of the Program’s disability-related policies, including the process for a Client to request a reasonable accommodation to a Program policy, practice, or requirement because of the Client’s disability or perceived disability, and the process for a Client to file a disability related grievance”.
- 3) Subdivision (D) was added to Section 8406 (a) (1) (x) to permit waiver of the 10% set-aside requirement for transitional housing rents where the applicant or State recipient has demonstrated that its Program is funded from sources other than FESG funds to provide assistance to all Clients when they move to permanent housing. This assistance could include such things as assistance with security deposit, first/last month’s rent, or household items, and must equal at least 10% of all the rent collected from the Client to whom the assistance is provided.
- 4) Section 8406 (a) (1) (xi) (E) has been amended to require that every Client of Transitional housing be provided referrals to permanent housing (rather than placements into permanent housing). This is consistent with what is currently required in the Department’s Emergency Housing and Assistance Program (EHAP).
- 5) The original text of Section 8406 (a) (1) (xii) has been deleted, and this subdivision has been amended to clarify the eligibility of in-house telephone use by Clients of an Emergency shelter or Transitional housing facility. The original text of subdivision (a) (1) (xii) dealt with the federal nonsupplant rule for Essential Services. This rule is already stated in the federal FESG regulations at 24 CFR 576.21 (b) (1), so the rule does not need to be repeated in the State regulations.

Section 8407- Homeless Prevention Activities

- 1) Section 8407 (c) (2) (i) has been amended to eliminate the requirement that the payment of initial rent to assist a homeless person or household into permanent housing be based on a sudden reduction in the income of that household. This is consistent with the federal FESG regulations, (24 CFR 576.21), and HUD’s guidance on this issue.
- 2) New subdivisions have been added to Section 8407 (d) to make the requirements for the provision and administration of utility assistance consistent with those stated in Section 8407 (c) for the provision and administration of Residential Rental Assistance.

3) Language has been added to subdivisions 8407 (c) (4) and (d) (4) to clarify that money received for homeless prevention is still subject to the federal limitations on the advancement of funds found in 24 CFR 576.63 and 24 CFR Parts 84 and 85. This will, in fact, restrict the amount of interest actually accruable on these funds, and require that this interest be returned to the Department for return to HUD.

4) Language has been added to Section 8407 (c) (6) and 8407 (d) (5) to clarify that Subgrantees may also be the entities which distribute rental assistance funds directly to the landlord, or utility assistance funds directly to the utility company for the benefit of the client.

Section 8408 – Leasing or Renting Rooms with Vouchers

Section 8408 (e) has been amended to clarify that vouchers can be used by a homeless person or household.

Section 8411 – Grant Selection Process

1) Subdivision (b) (1) (v) has been amended to permit consideration of years of related experience of key staff who have worked in other programs, rather than just in the Program for which State FESG funds are being requested. Related experience outside of the Program must be described in order for the applicant to receive points for that experience.

2) Sections 8411 (b) (1) (vii), (viii), and (ix) have been amended to clarify that the time period for evaluation of past performance encompasses FESG grants from no more than the previous four years. This clarification was made to deal with instances where the Department may not have four years of Grant data on which to evaluate past performance.

3) Section 8411 (b) (2) (i), (formerly Section 8411 (b) (3) (i)), has been moved into a new “Needs” rating category because of confusion expressed over having this rating factor appear in the Cost-Efficiency rating category. Language has also been added to clarify that Programs that rely more heavily on FESG funds, will receive more points for this rating factor

4) Section 8411 (b) (2) (ii) (formerly Section 8411 (b) (2) (vii)), has been amended to eliminate the use of any homeless plan or document in scoring this rating factor because of problems that have arisen in recent years due to differences in the way communities prepare their homeless plans. Instead, the Department has added language to this subdivision that requires certification of the level of local need by a county-level coordinating body or agency of county government specifically dealing with the issue of homelessness. The county-wide jurisdiction of the certifying entity is required. The reason behind this is to try to ensure that the same entity is certifying as many applications from that jurisdiction as possible so that some comparative judgment can be made. The certifying entity must also meet the conflict of interest provisions set forth in 24 CFR 576.57 (d). Language has also been added to this section to permit the Department to specify in the NOFA what local entities may be certifying entities; however, at this point in time the Department does not want to require that one specific entity in each of the FESG-eligible counties be certified

to score this rating factor. This rating factor has also been moved from the “Impact and Effectiveness” rating category into the “Needs” rating category because it deals with the relative need for the type of Client-housing provided by the Program.

5) Section 8411 (b) (3) (i) has been amended to clarify that services to be counted within this rating factor include services offered through direct referral of Program Clients to other agencies that provide services not directly available through the Program. Language has also been added to this section which requires applicants to: (1) provide backup documentation substantiating an arrangement between the Program and other agencies to provide these services to Program Clients; and (2) explain how the Program will provide Clients access to services when barriers to accessibility exist in the Program.

6) The points awarded for Section 8411 (b) (3) subdivisions (iii), (iv), and (v) have been increased from 20 points each to 30 points each to make up, in part, for the elimination of the “Program Consequences” rating factor that was formerly part of the Cost Efficiency rating category. The “Program Consequences” rating factor was eliminated in response to public comment over the difficulties with verifying the information provided by applicants for this rating factor.

7) Section 8411 (b) (3) (v) has been amended to permit all Programs except Transitional housing Programs to count persons who are stabilized for a minimum of 30 days toward the Program’s success rate. Since Transitional housing Programs typically have longer lengths of stay, the minimum length of stabilization for these Programs will remain at 90 days.

8) The points awarded for Section 8411 (b) (3) (vi) have been reduced from 60 to 40 because of concerns about weighting this factor too heavily because it does not readily distinguish between applicants.

9) Language has been added to Section 8411 subdivisions (b) (4) (i) A) through (F) which clarifies that Essential Services costs will not be considered when calculating Program cost-efficiency, and also clarifies current practice of the State FESG program regarding other expenses considered when calculating cost efficiency. Language has also been added which permits the Department to require that applicants submit documentation to verify the accuracy of the information provided in Section 8411 (b) (4).

10) Language has been added to Section 8411 (b) 4) (ii) that clarifies this rating factor by providing applicants with some examples of the kinds of collaboration that the Department is interested in knowing about, such as: coordination of service delivery with other providers of housing or services to the homeless, use of volunteers, use of in-kind donations, client and community educational programs, and participation in coalitions This clarification should help applicants provide more useful answers on which their applications can be more fairly evaluated and distinguished. This subdivision has also been amended to clarify that in evaluating this rating factor, the Department may ask the applicant to provide up to three letters from collaborating organizations which describe their collaborative relationship with the applicant. This is consistent with current practice in the State FESG program. The number of points for this rating factor has also been increased from 30 to 40 to make up, in part, for the elimination of the State Objectives rating category.

11) Section 8411 (b) (5), has been modified to reduce the number of points awarded for this subdivision. Subdivision 8411 (b) (5) (i) has also been amended to clarify that points may be awarded for an imbalance in the types of programs funded in prior years such as emergency shelter programs versus transitional housing programs, rather than simply awarding points to organizations because they had been unsuccessful in their efforts to receive FESG funds in previous funding rounds.

12) Section 8411 (d) has been amended to clarify that pursuant to 42 U.S.C. 1374 (a) (4) the award of FESG funds is also subject to the aggregate federal limitation on the award of funds for Homeless Prevention activities.

13) Section 8411 (h) has been amended to break ties within each of the set-asides in the event of a tie for applicants in the lowest-ranked position to be funded, by awarding funds in that set-aside to the applicant that scored the most points overall in the Cost Efficiency rating category. This rating category was chosen as the tie-breaking category because the information in this category can be most easily verified.